

Applicant agrees that this is one possibility to actually build a physical structure corresponding to the electrical diagram shown in Figure 2 of the Westphal et al. reference. Other possibilities are plausible, however, wherein the inner conductor would proceed in the same plane as the spiral coil, with the turns of the spiral coil exhibiting small deflections to accommodate the inner conductor. An example is shown in the attached sketch. In such a situation, the inner feed conductor would be in the same plane as the spiral coil. The Examiner's rejection is basically an inherency rejection. The Westphal et al. reference, however, is completely silent as to any physical structure corresponding to the electrical wiring diagrams shown in Figure 2 and in the other figures of the Westphal et al. reference. Applicant therefore respectfully submits it is purely speculative as to how such a structure would be built/. It has long been held in the case law, however, that mere suppositions and allegations cannot support a finding of inherency. As stated by the Court of Customs and Patent Appeals more than 60 years ago:

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

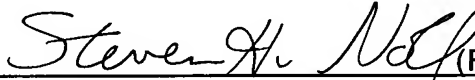
Hansgrig v. Kimmer, 102 F.2d 212, 40 U.S.P.Q. 665 (CCPA 1939).

This position has been reiterated many times by the Court of Appeals for the Federal Circuit. Moreover, the Federal Circuit has held that if some sort of intrinsic evidence is relied upon to establish inherencies, this evidence "must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would so recognized by persons of ordinary skill" (emphasis added), *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1267, 20 U.S.P.Q.2d 1746 1749 (Fed. Cir. 1991).

Applicant therefore respectfully submits the Examiner has not established a proper basis for anticipation of claim 1 by the Westphal et al. reference. Claims 2 and 3 add further structure to the novel combination of claim 1, and therefore not anticipated by Westphal et al. for the same reasons discussed above in connection with claim 1.

Claims 1-3 are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

Submitted by,

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